UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

BOBBY JO ROSINBAUM and ROBERT WILLIAM MORGAN, JR., *individually and on behalf of all similarly situated individuals,* Plaintiffs, v. FLOWERS FOODS, INC., *and* FRANKLIN BAKING CO., LLC, Defendants.	Civ. A. No. 7:16-cv-00233-FL **JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS & COLLECTIVE ACTION SETTLEMENT**

COME NOW Plaintiffs Bobby Jo Rosinbaum and William Robert Morgan, Jr. (collectively referred to as "Plaintiffs" or "Named Plaintiffs"), and Flowers Foods, Inc. ("Flowers Foods") and Franklin Baking Co., LLC ("Franklin") (collectively, "Defendants"), by and through their respective counsel, and respectfully file this Joint Motion for Preliminary Approval of Class & Collective Action Settlement. In support of this Motion, the Parties state as follows:

1. Plaintiffs are former distributors contracting with Franklin. Plaintiffs filed this Action against Defendants on behalf of themselves and a class of current and former distributors with Franklin. (Docs. 1, 140, 304, 306.) Plaintiffs allege violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* and the North Carolina Wage and Hour Act, N.C. Gen. Stat §§ 95-25.1, *et seq.* ("NCWHA"). (Doc. 1) Plaintiffs' claims are all premised on the allegation that Franklin improperly classifies its distributors as independent contractors rather than employees. (*Id.*) Plaintiffs claim damages in the form of unpaid overtime for hours worked over forty in a week under the FLSA as well as alleged unlawful deductions under the NCWHA. (*Id.*)

2. On March 1, 2017, this Court granted Plaintiffs' motion for conditional certification pursuant to § 216(b) of the FLSA. (Doc. 140.) The FLSA Collective Class was defined as:

> All persons who are or have performed work as "Distributors" for Defendants under a "Distributor Agreement" with Franklin Baking Company, LLC or a similar contract that they entered into during the period commencing three years prior to the commencement of this action through the close of the Court-determined opt-in period and who file a consent to join this action pursuant to 29 U.S.C. § 216(b).

(*Id.*)

3. Following conditional certification and after completion of discovery, Defendants moved to decertify the FLSA collective action (Docs. 303, 304) and Plaintiffs moved for class certification of their NCWHA claims (Docs. 305, 306). Both motions remain pending.

4. After full briefing of the Motion for Class Certification and Motion to Decertify the FLSA Collective, the Parties, having extensively litigated the case and having had the opportunity to evaluate and appreciate the relative strengths and weaknesses of their respective cases, requested that this Court stay the case in order for the Parties to engage in arms-length negotiations. (Doc. 365.) This Court granted that motion and stayed the case on June 19, 2019. (Doc. 366.)

5. Since that time, the Parties engaged in extensive negotiations in an attempt to settle this matter. (*See* Doc. 374.) After years of hard-fought litigation and extensive negotiating, the Parties have reached a comprehensive settlement agreement.

6. The settlement provides substantial monetary compensation to all FLSA Collective Members and Class Members participating in the settlement. The settlement also provides meaningful changes to Franklin's distributor program and other non-monetary relief for FLSA Collective Members and Class Members who continue to operate as distributors for Franklin.

7. The Parties view the Settlement as a desirable alternative to the uncertainty, expense, and delay that would result from further litigation. Plaintiffs believe the settlement provides significant value for distributors. Plaintiffs also believe the Settlement is in the best interests of all members of the class and collective action, and should be approved by the Court as

fair, reasonable, and adequate in all respects. As discussed more fully in the Memorandum in Support of Motion for Preliminary Approval, the Settlement unquestionably satisfies the Fourth Circuit's fairness and adequacy tests.

8. As such, the Parties ask the Court to:

   a. Grant preliminary approval of the proposed settlement;

   b. Preliminarily certify the following class for settlement purposes under Fed. R. Civ. P. 23: Any individual who, either individually or through a business entity, was a party to a Distributor Agreement with Franklin Baking Co., LLC operating in North Carolina between December 1, 2013 and May 21, 2019;

   c. Appoint Shawn J. Wanta of Baillon Thome Jozwiak & Wanta LLP, Susan Ellingstad of Lockridge Grindal Nauen, PLLP, and J. Gordon Rudd of Zimmerman Reed LLP as Class Counsel;

   d. Appoint Atticus Administration as the Settlement Administrator;

   e. Approve the form, content, and method and distribution of the Settlement Notice to Class Members;

   f. Direct that notice under the Class Action Fairness Act of 2005 ("CAFA") be issued to appropriate state and federal officials;

   g. Set a briefing schedule for: the joint motion for final approval, Class Counsel's motion for attorneys' fees, and Named Plaintiffs' motion for Service Awards;

   h. Schedule a fairness hearing to consider final approval of the proposed settlement.

9. With this Joint Motion for Preliminary Approval of Class & Collective Action Settlement, the Parties also submit a Proposed Order preliminarily approving the settlement and adjudging it to be fair, reasonable, and adequate.

WHEREFORE, the Parties request that the Court enter the proposed Order Preliminarily Approving the Settlement.

Respectfully submitted this 11th day of May, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2020, I electronically filed the foregoing **Joint Motion for Preliminary Approval of Class & Collective Action Settlement** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record including the following counsel for Plaintiffs:

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